SURFACE RIGHTS IN ALBERTA

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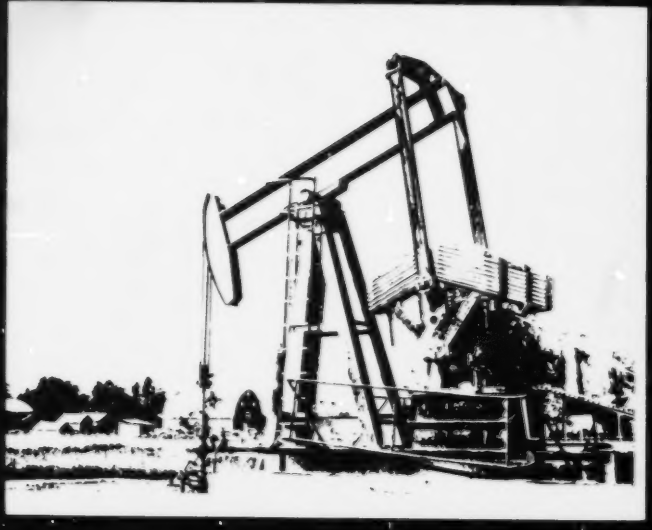

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TERMINOLOGY

It is helpful in understanding the Surface Rights Act and the workings of the Surface Rights Board to know the meaning of certain words and phrases commonly used:

ENTRY FEE - an amount of money payable by an operator to the lessor under a surface lease or to the respondent named in a right of entry order **before** the operator enters on the land to commence his operations. (See page 8 for details).

OWNER - the registered owner of the surface of the land.

OCCUPANT - any person, other than the owner, who has an interest in the surface of the land such as a purchaser under an agreement of sale, a tenant, a licensee, etc.

OPERATOR - a person or company having the right to work the minerals under the surface, or a person or company authorized by some other legislation to construct a pipeline, power transmission line or a telephone line.

RIGHT OF ENTRY ORDER - an order of the Surface Rights Board granting to an operator the use of a certain area of the land surface for operations such as drilling for and producing oil and gas; mining for and producing coal or other minerals; constructing and operating roadways, pipelines, power transmission lines; or any purpose directly connected with any of the foregoing.

SURFACE LEASE - any agreement entered into by an owner or occupant with an operator under which the surface of the land may be used for any purpose for which a right of entry order can be granted, and which provides for the payment of compensation (rental or otherwise).

SURFACE RIGHTS - generally those rights, privileges and obligations accompanying ownership of the surface of land, such as title, possession, use and control. These rights include the general right to decide who may or may not come onto the land, and for what purpose. Some of these rights are not absolute - they may be reduced or affected in certain circumstances by other laws of Alberta, such as the Surface Rights Act.

The legal definitions of terms used in the Surface Rights Act are set out in Section 1 of the Act.

SURFACE RIGHTS ACT, 1983

In Alberta, this legislation governs the acquisition of those interests in the surface of land which oil, gas and coal companies, pipeline companies or public utility companies require for their operations and facilities. It also governs the determination of the amount of compensation payable to the surface owner or occupant.

The Act applies to all lands under Alberta Government jurisdiction, and Crown lands. It comes into effect when the surface owner or occupant and the company are unable to reach a private agreement for the use of the lands concerned.

In most instances the surface owner is able to reach a satisfactory agreement with the operator, but where this is not possible the Surface Rights Act provides a process for settlement.

SURFACE RIGHTS BOARD

The Board consists of such number of members as may be appointed to it by the Lieutenant Governor in Council, one of whom is named as Chairman and one of whom may be named as Vice-Chairman.

The Board's office is located in Edmonton and the Chairman, members and support staff can be reached by phoning the nearest R.I.T.E. operator and asking for 427-2444.

The mailing address is:

The Surface Rights Board
18th Floor, Phipps-McKinnon Building
10020 - 101A Avenue
EDMONTON, Alberta T5J 3G2

GENERAL INFORMATION ON AREAS OF FREQUENT FARMER INQUIRY

REFUSING TO ALLOW AN OPERATOR ONTO YOUR LAND

Legally, the farmer can do this until a satisfactory agreement is reached with the operator, or the operator has obtained a right of entry order from the Board. HOWEVER, a surveyor has a legal right to go onto any land in Alberta for the purpose of making a survey for the operator after a reasonable attempt is made to give notice to the person in possession of the land. The operator is liable for any damages caused by his surveyor.

THE SURFACE LEASE

The Land Agents Licencing Act requires that the proposed lease be left with the farmer for 48 hours so tnat he can decide whether to sign it or not.

If, after the 48-hour period, the farmer is not satisfied with the area to be taken, the amount of rental, or any other provision of the lease, he can return it, unsigned, to the operator's representative. If the lease is satisfactory to the farmer or if the farmer can succeed in having the terms of the lease changed so that his is satisfied, he can sign the lease and the Surface Rights Act and the Surface Rights Board do not then become involved.

If the farmer does not sign the surface lease offered by the operator, the operator must apply to the Board for a right of entry order covering the portion of the surface required for the well site, access roadway, battery site, pipeline, power line or telephone line, etc. A copy of the application and a Notice must be served on the owner and each occupant, and after 14 days the Board may grant a right of entry order.

OBJECTING TO THE RIGHT OF ENTRY ORDER

The owner or occupant can submit an objection in writing to the board with respect to any matter EXCEPT matters dealing with the amount of compensation. The matter of compensation payable for the right of entry will be determined by the Board after a compensation hearing. It is therefore not considered as an objection to the granting of a right of entry order.

The written objection must contain the reasons for such objection.

The Surface Rights Board has no jurisdiction or authority with respect to the LOCATION of a well site or mine opening, or the ROUTES of pipelines, power lines and telephone lines. Objections in this regard should be made to the Energy Resources Conservation Board, 640 - 5th Avenue, South West, Calgary, Alberta.

On receiving an objection the Surface Rights Board will decide whether a hearing should be held before a right of entry order is granted, or whether the objection should be made to the Energy Resources Conservation Board, or whether the objection deals with matters of compensation. The Board will advise the person making the objection of its decision.

ENTRY FEE

The Surface Rights Act requires that the operator shall pay to the owner of the land an entry fee equal to the lesser of $5,000 or $500 for each acre of land granted to the operator or a proportionate amount not to be less than $250 where the land granted is less than one acre. This entry fee is payable with respect to each titled unit of the owner that contains land granted to the operator and must be paid **before** the operator takes possession of the land granted under a surface lease or right of entry order. The entry fee is not payable with respect to lands owned by the Crown.

The entry fee is payable in addition to any compensation which is payable under a surface lease or which may be determined by the Board to be payable for a right of entry order.

Under a right of entry order, if there is a dispute as to which of the respondents named in the order is entitled to the entry fee, the operator may pay such entry fee to the Board and the Board at the time it makes a compensation order shall determine who is entitled to receive the entry fee and shall order payment of the entry fee to that respondent.

The determination by the Board as to payment of the entry fee may be appealed to the Court of Queen's Bench in the same manner as a compensation order.

DETERMINING PAYMENT FOR RIGHT OF ENTRY

The amount of compensation payable by the operator for the right of entry is determined by the Board after a compensation hearing at which it receives evidence from the owner or occupant and the operator with respect to:

- the value of the land (as defined in the Act);
- the loss of use;
- the adverse effect of the operator on the remaining land of the owner;
- nuisance, inconvenience and noise;
- damage to the land;
- any other factors which the Board considers proper.

The Board can also consider the cost of relocation of a residence (if this is necessary as a result of the operations), damage to other lands of the owner, loss or damage to livestock, and time and expense of recovering strayed livestock.

If the owner proposes to enter into a surface lease, it is recommended the rental agreement take into account the same factors as the Board considers when it is determining compensation. As each location is considered individually by the Board, there may be considerable differences in the amounts of compensation awarded on different locations. In addition, changing economic conditions may also materially affect the amounts of compensation awarded over a period of time.

PAYMENT FOR RIGHT OF ENTRY

If the owner and operator enter into a surface lease the owner should be paid the first year's consideration before the operator goes onto the land.

If there is a right of entry order the compensation hearing will be held within 90 days of the date of the right of entry order, although this time period may be extended by the Board upon notice to the parties. The compensation is effective as of the date of the right of entry order. The compensation order will be issued within 60 days of the conclusion of the compensation hearing and this time period may also be extended upon notice to the parties. The operator will pay the compensation upon receipt of a copy of the compensation order, unless either

the operator or a respondent decides to appeal the order.

However, the operator is also required, after the right of entry order is issued and before entering onto the land, to pay the owner an amount equal to 80 per cent of the first year's consideration as shown in the last written offer made by the operator to the owner prior to the application to the Board for right of entry.

If there is a dispute as to which of the respondents is entitled to receive the prepayment of compensation, the operator must pay the amount of the prepayment to the Board and the Board will deal with the matter in its compensation order.

LEGAL REPRESENTATION FOR THE FARMER

The proceedings at Board hearings are quite informal, and in most cases the surface owner or occupant is quite capable of presenting the evidence that the Board requires by himself. It is not necessary to have a lawyer in any proceedings before the board. However, the owner may feel that a lawyer could do a better job for him than he could do for himself. He may feel that a lawyer is better able to deal with large companies in negotiating a surface lease or in presenting his case for compensation at a hearing before the Board.

APPEAL OF COMPENSATION ORDER

The Surface Rights Act provides that an appeal from a compensation order may be made to the Court of Queen's Bench of Alberta within 30 days of receipt of the compensation order by the operator or respondent. The appeal is heard by a Judge of the Court of Queen's Bench in the Judicial District in which the land is situated.

The appeal is in the form of a new hearing. The same evidence that was presented to the Board, as well as any other evidence which may have been overlooked at the Board hearing, can be presented. In certain cases a further appeal may be taken from the decision of the Court of Queen's Bench to the Court of Appeal of Alberta.

LENGTH OF TIME THAT SURFACE LEASE OR RIGHT OF ENTRY ORDER REMAINS IN EFFECT

The surface lease remains in effect for the term of years specified therein, but most surface leases contain a clause permitting the operator to terminate the lease at any time upon proper notice. A right of entry order remains in effect until it is terminated by a further order of the Board. When the operator no longer requires the land concerned, he can apply for termination of the order. At the same time, the operators must supply:

(i) a copy of a Reclamation Certificate issued by the Land Conservation and Reclamation Council certifying that the area concerned has been properly restored and reclaimed, AND

(ii) evidence that all persons having an interest in the lands have been notified of the proposed termination.

A surface lease can only be terminated by the operator upon notice as set out in the lease AND upon the operator obtaining a Reclamation Certificate.

COLLECTING FOR DAMAGES CAUSED BY THE OPERATOR WHICH ARE NOT COVERED BY THE SURFACE LEASE OR COMPENSATION ORDER

If the operator refuses to pay, the owner can submit a claim to the board, if it deals with damage to his land, loss or damage to livestock or other personal property, or time and expense involved in recovering strayed livestock. However, the Board can only consider the claim if it is made within two years of the last date on which loss or damage occurred and if the claim is for $5,000 or less.

The Board can only deal with claims for damages to lands which are not part of the area granted in a right of entry order for which compensation may be awarded under a compensation order or for damages to the area demised in a surface lease. Claims for off-site or off right of way damage to the owner's land or for loss or damage to livestock and other personal property can be considered by the Board.

If the claim does not meet all of the above requirements, the owner must take legal action in the Courts to collect damages.

VARYING OR FIXING THE RATE OF COMPENSATION PAYABLE UNDER A SURFACE LEASE OR BOARD ORDER

The Surface Rights Act provides for a review of the rate of compensation payable under a surface lease or a Board compensation order. This applies to all surface leases and Board orders where the lease or order provides for an annual or other periodic payment of compensation. The provision also applies to a surface lease or compensation order which does not provide for the payment of compensation on an annual or other periodic basis but does relate to major power transmission line structures.

In these cases the operator is required to give a notice to the lessor under a surface lease or to the respondent under a compensation order within 30 days after the fourth anniversary of the date of the surface lease or the fourth anniversary of the date of the right of entry order to which the compensation order relates. The notice must state that the operator wishes to have the rate of compensation reviewed or that the lessor or respondent has the right to have the rate of compensation reviewed. If the operator fails to give notice as required, then, after a reasonable time, the lessor or respondent may give notice to the operator stating that he wishes to have the rate of compensation reviewed. It is expected that, in either case the operator and the lessor or the respondent will negotiate in good faith to reach an agreement as to a rate of compensation for the next five years of the term of the surface lease or compensation order. This procedure is repeated every five years thereafter.

If the owner and operator reach an agreement as to a new rate of annual compensation, then either the surface lease is amended to this effect or the Board is notified of the agreement so that the compensation order can be amended to show the new rate of compensation.

If the owner or occupant and operator cannot agree on a new rate of compensation, the operator or owner may, after the end of the compensation year in which notice is given, apply to the Board in writing to review the rate of

compensation. The Board will hold a hearing at which evidence can be received from the owner and the operator and it will then determine the rate of compensation to be paid by the operator for the years of the term subsequent to the year in which notice is given.

The Board will provide any owner with advice as to the exact procedure to be followed upon recieving a request for assistance in these matters.

NON-PAYMENT OF COMPENSATION ON DUE DATE

When the operator does not make a payment under a surface lease or a Board compensation order within 30 days after such payment is due, the person entitled to receive such payment can advise the Board that he has not been paid and the Board will attempt to have the operator make the payment that is in default. If the operator still refuses or neglects to make the required payment, the board will advise such person of the procedure to have the amount owing paid by the Provincial Treasurer of Alberta.

If the well, pipeline or other facility is obviously abandoned, the owner should take steps to terminate the surface lease or right of entry order and it is suggested that the owner consult with a lawyer or the Board in this regard.

It is hoped that this booklet provides sufficient information on those matters which most often concern surface owners and occupants. However if you have particular questions on surface rights which are not answered in this booklet, please telephone, write to or visit the Surface Rights Board at:

18th Floor, Phipps-McKinnon Building
10020 - 101A Avenue
EDMONTON, Alberta
T5J 3G2
Telephone: 427-2444

For additional copies of this booklet, contact:

The Publications Office
Alberta Agriculture
7000 - 113 Street
EDMONTON, Alberta
T6H 5T6

For copies of the Surface Rights Act and Regulations, contact:

Queen's Printer
11510 Kingsway Avenue
EDMONTON, Alberta
T5G 2Y5

The Office of the Farmers' Advocate is available to provide advice to land owners in negotiating surface rights agreements. For further information in this regard contact:

Farmers' Advocate
3rd Floor
J.G. O'Donoghue Building
7000 - 113 Street
EDMONTON, Alberta
T6H 5T6
Telephone: 427-2434